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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK BIOMETRIC	) Master File No. 3:15-cv-3747-JD
INFORMATION PRIVACY)
LITIGATION	) CLASS ACTION
_____)
	) REPLY OF OBJECTORS
This Document Relates to:	) FRANKFOTHER AND
	) FLANAGAN TO PLAINTIFFS'
ALL ACTIONS	) RESPONSE TO OBJECTORS'
	) MOTION FOR ATTORNEY'S
	) FEES
)
	) Judge: James Donato
	) Courtroom: 11
	) Hrg. Date: April 22, 2021
	) Time: 10:00 a.m.
_____)

Objectors Frankfother and Flanagan hereby reply to Plaintiffs' response/opposition to their fee motion as follows:

I. Objectors' Right to Fees.

Plaintiffs' arguments against Objectors' Fee Motion continue to evince an anachronistic and antagonistic view of objectors and the role they play in Rule 23 cases.

Plaintiffs do, however, concede that objectors "can be entitled to attorneys' fees in certain circumstances, the appropriateness of the fee depends on whether the objectors added 'marginal value to the litigation.'" Document 541, p. 2 at 11-13. Nonetheless, they deny that objectors have added value here, focusing only on the fee order's lack of any explicit credit to the objectors, and the slight difference between the awarded percentage and the percentage recommended by the Objectors. But that is identical to the fact pattern in the *Wells Fargo* case in which objector's counsel received their full lodestar. Exhibit A to Objectors' Fee Motion.

Plaintiffs have failed to address the implications of *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 963 (9th Cir. 2009), and the 2nd Circuit's very practical discussion of this issue in *White v. Auerbach*, 500 F.2d 822, 830 (2nd Cir. 1974) (it is "unfair to counsel when, seeking to protect his client's interest and guided by the facts apparent on the record, he spends time and effort to

prepare and advance an argument which is openly adopted by the court, but then receives no credit therefor because the court was thinking along that line all the while.”). Plaintiffs do not deny the Court never raised concerns with their intended fee request prior to the November 20, 2020 filing of Objectors’ objection.

II. Lodestar Rate.

Class Counsel challenge the use of the *Laffey* matrix in establishing a reasonable hourly rate for Objectors’ counsel. The current *Laffey* rate for attorneys with greater than 20 years of experience is \$914.

John Pentz has been practicing law since 1992 (i.e. 28 years), and has previously been awarded an effective rate substantially in excess of \$900/hour by the Northern District of Illinois. Kendrick Jan has been practicing law since 1982 (i.e. 38 years). He has commonly received fees equivalent to greater than \$900/hour in tort litigation matters, and charges rates of up to \$900/hour in certain litigation and non-litigation matters. The requested \$900 hourly rate is substantially lower than a number of Class Counsel’s partner rates. (E.g. The rate is \$250/hour less than Mr. Edelson’s hourly rate of \$1,150, and \$425/hour less than Mr. Geller’s hourly rate of \$1,325. Document 499-6, p. 10, and Document 499-4, p. 9.)

III. Source of Fees.

Objectors' leave to the discretion of the Court the source of the payment of Objectors' attorney's fees. This is not a matter of ambivalence, it is a matter of deference to the Court in this regard.

CONCLUSION

For the foregoing reasons, this Court should award Objectors' counsel fees in the amount of \$119,880.

Respectfully submitted,
Dawn Frankfother and Cathy Flanagan
by their attorneys,

s/ Kendrick Jan
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was filed with the Clerk of Court using CM/ECF on April 2, 2021, and as a result has been served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

By: s/ Kendrick Jan